IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CIVIL APPELLATE SIDE.

WRIT PETITION NO. 1029 OF 2001

ALONGWITH

CIVIL APPLICATION NOS. 116 & 117 of 2005.

Ashok Shahaji Hivrale ..... Petitioner.

versus

Union of India and anr. ..... Respondents

.....

Shri D.V. Gangal for S.V. Marne for the petitioner.
Shri Sureshkumar for Respondent – Union of India.

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CORAM: V.G. PALSHIKAR &
D.B. BHOSALE, JJ.

DATED : 19TH AUGUST, 2005

ORAL JUDGEMENT (Per Palshikar, J.) :

1. By this petition, the petitioner has challenged the order passed by the Central Administrative Tribunal in Original Application

No 1085 of 1994 on 7-6-2000. He has also prayed for quashing of the charge sheet issued to the petitioner on 20th July 2000. Direction is also claimed to promote the petitioner to the post of goods guard and other consequential prayers are also made.

2. The order impugned is factually in favour of the petitioner. In paragraph 18 of the judgment, the original application has been allowed. The same reads as under :

> **"In the result, O.A. deserves to be allowed and is allowed. The penalty orders Annexure A-1, A-3 and A-4, the charge sheet Annexure A-6 dated 14-12-1992, as being issued by incompetent authority is quashed and set aside. The applicant is not entitled to any relief in respect of the suspension and the declaration for promotion to the post of Goods Guard as the penal does not survive. No order as to costs."**

3. The challenge of the petitioner is that the original application having allowed, the tribunal could not have granted permission to issue a fresh charge sheet to the employer. This contention on the face of it is untenable as will be seen from the observations of the tribunal in para 17 of the order, which reads thus:

> **"It is for the respondents to consider whether**

after issue of a fresh charge sheet or on the basis of charge sheet Annexure A-7 they want to proceed further. This is not the subject matter of the O.A. hence, we refrain ourselves from recording any opinion on the subject."

4. From the above it will be seen that the question as to whether fresh charge sheet can be issued or not, not being the subject matter of the Original Application, the tribunal has refrained any opinion in that regard.

5. It was after this order was passed that fresh charge sheet dated 20th July 2000 was issued which by this petition, the petitioner also wants to be quashed. The petitioner can raise all objections that he may have against the charge sheet by answering the charge sheet and if necessary by recording adequate evidence, thereafter departmental appeal and revision is also available. In any event another application challenging imposition of penalty pursuant to the charge sheet dated 20-4-2000 can always be filed. This being the position merely because charge sheet is issued, we see no reason to interfere, particularly when the out come of charge sheet and the departmental inquiry could be anything. To order that such inquiry,

where departmental misconduct is the allegation, be quashed cannot be possible in exercise of extra ordinary jurisdiction under Article 226 of the Constitution. Hence the petition fails and is dismissed. It is however made clear that the petitioner shall be at liberty to raise all objections to the charge sheet when he decides to contest the same. All other civil applications stand disposed of. Petition accordingly disposed of.

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